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on on Report on the EU strategy on Roma inclusion

Committee on Civil Liberties, Justice and Home Affairs

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United in diversity

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1.1. Legal implications

1.1.1. Not compromising but complementing anti-discrimination legislation

There is a lot to achieve regarding anti-discrimination, considering the wide-spread anti-gypsyism and the insufficient application and implementation of existing regulations. They either don't cover certain areas, such as multiple discrimination or they prove to be inadequate when implemented. A good example for the latter is the low level of awareness about the anti-discrimination legal frame, which results in the astoundingly few number of lodged complaints.

The rapporteur argues however, that even if ethnicity based discrimination - as defined in EU Directives 2000/43¹ and 2000/78² - could be eliminated before now, the social and economic exclusion of most Roma would still remain, given the multiplicity of interconnected factors generating it³ (such as serious geographic disadvantages, low levels of education, the emergence of a new type of labour demand, or the collapse of centrally planned and regulated economies attracting a multitude of low skilled or unskilled labour force) and the - often physical - barriers blocking social and economic integration (such as the distance of accessible workplaces, the lack of transportation and infrastructure, or inadequacy of local educational systems in disadvantaged regions). Hence anti-discrimination measures and fighting racism are - although indispensable - by themselves not enough to overcome the historic and economic lag of the Roma minority⁴. Your rapporteur is convinced that it is necessary to complement the existing equality legislation and address the specific needs of Roma - and non-Roma in a similar situation - at the EU level on an equally firm legal basis formulating a clear obligation towards the stakeholders.

1.1.2. Socio-economic integration is a matter of fundamental rights

The rapporteur believes that the strategy aiming the socio-economic integration and reintegration of Roma will however not at all compromise but rather complement the transposition or implementation of anti-discrimination laws. Moreover, given the extent of social and economic exclusion of Roma, the overall integration is essentially an issue of fundamental rights. A significant proportion of European Roma face such substandard conditions - almost totally disconnected from the economy, resulting in their exclusion from their basic human rights - that fostering social inclusion cannot be viewed within the frameworks of general policy rectifications, but must be handled as bridging one of the hugest gap in the fulfilment of constitutional and human rights in Europe.

¹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>

² Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:NOT>

³ BABUSIK F. and ADLER J. 2002 Romákat foglalkoztató vállalkozások, in: *A romák esélyei Magyarországon*, Kávé Kiadó - Delphoi Consulting

⁴ DE SCHUTTER, O. and VERSTICHEL, A. 2005 The Role of the Union in Integrating the Roma: Present and Possible Future in *European Diversity and Autonomy Papers* EDAP 2/2005

The EU-level effort to alleviate the poverty and social exclusion of European Roma must therefore place its primary emphasis on the fulfilment and promotion of second and third generational human rights to replenish the legally enforceable first generation of human rights, e.g. rights connected to human dignity, political rights and further rights of the person.

1.1.3. Legal "grey zone"

Most EU actions regarding the socio-economic situation of Roma - except those in connection with instruments defined by the Treaties, such as directives and regulations - belong to the category of soft law. Resolutions, reports, declarations, conclusions and communications of the EU's three major institutions therefore constitute a legal "grey zone" between non-law and positive law¹.

Several intergovernmental initiatives have been developed in the last few years. International organizations, such as the Council of Europe or the OSCE have drawn up good proposals and progressive ideas, but the result is at least doubtful. The rapporteur believes that the primary conclusion to be drawn from these initiatives is that rotund political slogans will never become reality without clear obligations and therefore soft law is deficient in fostering the social inclusion of Roma: rules and norms without normativity in this case may be effective, but not efficient.

1.1.4. Transcending soft law

Following the argumentation of standard legal theories nevertheless, community soft law regarding Roma is thus the prefiguration and feedstock of legislation to-come, to which the legal community committed itself by issuing the related quasi-legal instruments. Embodying the gradual normativity of international law, soft law represents a grade of liminality pointing from unregulated to regulated conditions, from subjective to objective, from general to specific, from non-formal to formal, and from ambiguous to predetermined. Hence soft law can only exist parallel with hard law and will subsequently gain its effectivity by follow-up legislation².

The European Union as a "sui generis" legal entity can provide the necessary leverage to force the participants comply with their own pledges. After the entry into force of the Treaty of Lisbon, the European Union has a variety of viable instruments - from macro-regional cooperation to enhanced cooperation- by which concerned Member States can commit themselves in fostering the social inclusion of Roma. By a clear mandate from the European Council, with the self-commitment of interested and devoted Member States and with the acquiescence of others the European Roma Strategy can come into existence.

Based on the findings of the study related to this report, the rapporteur will present specific recommendations in the draft report concerning the framework and structure of such a cooperation as well as the role of EU institutions, Member State governments, local

¹ BOYLE, A. E. 1999 Some Reflections on the Relationship of Treaties and Soft Law, in: *International & Comparative Law Quarterly* 48 pp. 901-913. Cambridge

² MALANCZUK, P. and AKEHURST M. B. 1997 *Akehurst's modern introduction to international law*, Routledge, London

authorities and stakeholder bodies such as the Roma Platform or the newly established Task Force of the European Commission on Roma inclusion.

2. Priorities and principles for the EU strategy on Roma inclusion

2.1. Explicit but not exclusive targeting

In all policy areas targeting the social inclusion of Roma, a clear distinction must be made between general and ethno-specific issues. Most aspects of education, employment, health care, housing and economic development regarding Roma must be included into the mainstream policies, whereas issues of racial discrimination, culture and identity must naturally be treated in connection with ethnic origin. Projects explicitly targeting the Roma minority are only reasonable if the disadvantage it intends to tackle is clearly and principally ethnicity-related.

From the above reasoning pronouncing that ethnicity and ethnicity-based discrimination is only one of the major factors - such as low qualification and territorial exclusion - determining the socio-economic deprivation of European Roma, it follows that the exclusion can be best grasped by reckoning them not as an ethnic group but as an economic target audience. In line with Principle No 2 and No 4 of the Common Basic Principles on Roma Inclusion declaring "explicit but not exclusive targeting" as well as "aiming for the mainstream" the EU strategy must focus on these common economic features of socially excluded Roma instead of trying to address all the social issues that any single group of the remarkably heterogeneous European Roma population suffers from. Notwithstanding such country or region-specific issues as the availability of halting sites for travellers or the lack of personal documentation in some countries, the social and economic conditions and the demands of Roma communities themselves are extremely similar in all countries.

The rapporteur believes that a common European solution is needed for a common European problem, irrespective of the diversity of additional and collateral concerns in specific regions affecting specific subgroups of Roma. The social and economic exclusion of Roma requires a strategy on its own, not excluding of course the subsequent or parallel development of independent policy responses to independent controversies.

2.2. Facing the territoriality of exclusion

Another important feature of the social exclusion affecting Roma is the strong territorial dimension of poverty and marginalization. The geographic distribution of social disadvantages is not uniform throughout the Member States, but poverty and social exclusion is concentrated in underdeveloped micro-regions which in many of the new Member States are predominantly inhabited by Roma. Exclusion from economic and social development has a predominantly territorial nature and these dropped behind areas hamper social development in its entirety. Intra-regional disparities are in many cases higher than those between the regions and the polarization is deepening, since economic and social interventions are concentrated in the dynamic centres causing the further decline of the excluded periphery.

The most disadvantaged regions and micro-regions lack the necessary financial resources to provide their own contribution to the Community funding that they are in principle eligible for and most often lack the administrative capacity and human resources to make good use of

the funding. These regions therefore enter the competition for EU and budgetary sources with an irrevocable disadvantage and it is necessary to pick them out from the underdog position and to target their specific needs through an equivalent, complex and intensive program.

An all-European crisis map needs to be established therefore, which measures and surveys those micro-regions within the EU where communities are hardest hit by poverty and social exclusion. These crisis areas can and should be identified by the following attributes:

- Accessibility of workplaces
- Distance of city centres
- High rate of unemployment
- Inadequate public services
- Inappropriate environmental conditions
- Lack of nearby companies and enterprises
- Lack of proper infrastructure
- Low income
- Low level of education
- Low-level human resources
- Poor or relatively expensive transport infrastructure
- Social tensions

The rapporteur believes that complex and holistic development programs with a cross-sector integrated approach are needed, which make immediate intervention possible in these underdeveloped areas, which struggle with serious structural disadvantages.